

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

EDWIN EUGENE MIER,

No. 4:17-CV-01732

Plaintiff,

(Judge Brann)

v.

(Magistrate Judge Carlson)

ANDREW SAUL,¹

Commissioner of Social Security,

Defendant.

ORDER

APRIL 17, 2020

Edwin Eugene Mier filed this action seeking review of a decision by the Commissioner of Social Security (“Commissioner”) denying Mier’s claim for social security disability benefits.² Mier subsequently filed a motion to remand in which he asserts that this matter should be remanded for rehearing before a properly appointed Administrative Law Judge pursuant to *Lucia v. S.E.C.*, 138 S. Ct. 2044 (2018).³ On April 1, 2020, Magistrate Judge Martin C. Carlson issued a Report and Recommendation recommending that this Court grant Mier’s motion, vacate the

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Andrew Saul, as the successor officer to Nancy Berryhill, Acting Commissioner of Social Security, is automatically substituted as Defendant in this action.

² Doc. 1.

³ Docs. 16, 17.

Commissioner's decision, and remand this matter for further proceedings.⁴ No timely objections were filed to this Report and Recommendation.

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error.⁵ Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the findings or recommendations made by the magistrate judge.⁶ Upon review of the record, the Court finds no error—clear or otherwise—in Magistrate Judge Carlson's conclusion that remand is required based upon the United States Court of Appeals for the Third Circuit's decision in *Cirko on behalf of Cirko v. Comm'r of Soc. Sec.*, 948 F.3d 148 (3d Cir. 2020). Consequently, **IT IS HEREBY ORDERED**

that:

1. Magistrate Judge Martin C. Carlson's Report and Recommendation (Doc. 29) is **ADOPTED**;
2. Mier's motion to remand (Doc. 16) is **GRANTED**;
3. The Commissioner's decision is **VACATED**, and this matter is **REMANDED** for further proceedings before a different Administrative Law Judge who has been properly appointed in

⁴ Doc. 29.

⁵ Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed).

⁶ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

accordance with the Appointments Clause of the United States Constitution;

4. Final Judgment is entered in favor of Plaintiff and against Defendant pursuant to Fed. R. Civ. P. 58 and sentence four of 42 U.S.C. § 405(g); and
5. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge